

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

ELIZABETH SINES, SETH WISPELWEY,
MARISSA BLAIR, APRIL MUÑIZ, MARCUS
MARTIN, NATALIE ROMERO, CHELSEA
ALVARADO, JOHN DOE, and THOMAS
BAKER,

Plaintiffs,

v.

JASON KESSLER, et al.,

Defendants.

Civil Action No. 3:17-cv-00072-NKM

JURY TRIAL DEMANDED

**PLAINTIFFS' MOTION TO PRECLUDE ARGUMENTATIVE FILE NAMES AND TO
EXCEED FILE SIZE OF 50MB**

Plaintiffs respectfully submit this Motion seeking to preclude the use of argumentative and prejudicial descriptions in the file name for exhibits uploaded to Box.com and requesting permission to exceed the file size of 50 megabytes.

BACKGROUND

Pursuant to the Court's July 15, 2021, Scheduling Order (Dkt. No. 991), the parties exchanged exhibit lists in September 2021. Defendant Christopher Cantwell filed an exhibit list that referenced exhibits that he previously provided to Plaintiffs in January 2020. (Dkt. No. 1065). In his exhibit list as well as in the file names of the exhibits provided to Plaintiffs, Defendant Cantwell used argumentative and prejudicial descriptions in the file names. *Id.* For example, Defendant Cantwell used descriptions including "Exhibit13-GorcenskiDangerousAntifa," "Exhibit9-DontKill," "Exhibit4-CantwellDefends," and "Exhibit125-MoersTakesCamera." *Id.*

On October 13, 2021, the Court ordered the parties to submit exhibits onto Box.com no later than October 21, 2021, "to facilitate submission and consideration of evidence." (Dkt. No.

1226). The Court instructed the parties to save exhibits using a naming convention that includes a “brief description” of the file and noted that “[t]he file names given by counsel will be visible to the jury.” *Id.* The Court further instructed that the “[d]ocuments and images must not exceed file size of 50 MB.” *Id.*

ARGUMENT

I. THE COURT SHOULD ORDER THE PARTIES TO USE NON-PREJUDICIAL AND NON-ARGUMENTATIVE DESCRIPTIONS

Under Federal Rule of Evidence 403, the Court may exclude relevant evidence “if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403. “Unfair prejudice” exists when evidence has the potential to cause the jury to render a decision on the basis of facts unrelated to the issues before it, *United States v. Simpson*, 910 F.2d 154, 158 (4th Cir. 1990), or when it might cause the jury to decide an issue based on an improper basis, commonly but not always an emotional one. *United States v. Blackwood*, 913 F.2d 139, 144 (4th Cir. 1990); *Sines v. Kessler*, No. 3:17-cv-00072, 2021 U.S. Dist. LEXIS 72553, at *18 (W.D. Va. Apr. 15, 2021).

Defendant Cantwell’s descriptions of exhibits in the file name such as those identified in his exhibit list and those previously provided to Plaintiffs run afoul of Rule 403. File names such as “Exhibit4-CantwellDefends,” “Exhibit9-DontKill,” “Exhibit13-GorcenskiDangerousAntifa,” and “Exhibit125-MoersTakesCamera” are inappropriately argumentative. Further, such filenames may cause the jury to reach a decision based on Defendant Cantwell’s interpretation of the documents instead of the jury’s own interpretation of the exhibits. Because the jury will be able to see the descriptions of the exhibits provided to the Court by the parties, Plaintiffs respectfully request that the Court order the parties to use non-prejudicial and non-argumentative file name

descriptions (e.g. “Photo of August 12, 2017,” “Video of August 11, 2017,” “Text Message from John Doe to Jane Doe”)¹ when uploading exhibits to Box.com for viewing by the jury.

II. THE COURT SHOULD ALLOW THE PARTIES TO UPLOAD FILES EXCEEDING FILE SIZE OF 50 MB

Plaintiffs’ exhibit list includes lengthy videos and voluminous documents. Some of these files exceed 50 megabytes. To comply with the Court’s October 13, 2021 Order, Plaintiffs request that the Court allow Plaintiffs to upload documents larger than 50 megabytes to Box.com. If there are technological reasons preventing the uploading of documents larger than 50 megabytes to Box.com, Plaintiffs request that the Court allow Plaintiffs to submit all such documents via a USB drive or other media.

CONCLUSION

For these reasons, the Court should grant Plaintiffs’ Motion and preclude the use of argumentative and prejudicial descriptions in the file name for exhibits uploaded to Box.com and allow Plaintiffs to upload files exceeding the file size of 50 megabytes.

Dated: October 17, 2021

Respectfully submitted,

/s/ Jessica Phillips

Jessica Phillips (*pro hac vice*)
PAUL WEISS RIFKIND WHARTON &
GARRISON LLP
2001 K Street, NW
Washington, DC 20006

Of Counsel:

Roberta A. Kaplan (*pro hac vice*)
Julie E. Fink (*pro hac vice*)
Gabrielle E. Tenzer (*pro hac vice*)

Jessica Phillips (*pro hac vice*)
Karen L. Dunn (*pro hac vice*)
William A. Isaacson (*pro hac vice*)
Arpine S. Lawyer (*pro hac vice*)

¹ Plaintiffs represent that they will use a similar nomenclature.

Michael L. Bloch (*pro hac vice*)
Yotam Barkai (*pro hac vice*)
Emily C. Cole (*pro hac vice*)
Alexandra K. Conlon (*pro hac vice*)
Raymond P. Tolentino (*pro hac vice*)
Jonathan R. Kay (*pro hac vice*)
Benjamin D. White (*pro hac vice*)
KAPLAN HECKER & FINK LLP
350 Fifth Avenue, Suite 7110
New York, NY 10118
Telephone: (212) 763-0883
rkaplan@kaplanhecker.com
jfink@kaplanhecker.com
gtenzer@kaplanhecker.com
mbloch@kaplanhecker.com
ybarkai@kaplanhecker.com
ecole@kaplanhecker.com
aconlon@kaplanhecker.com
rtolentino@kaplanhecker.com
jkay@kaplanhecker.com
bwhite@kaplanhecker.com

Agbeko Petty (*pro hac vice*)
Giovanni Sanchez (*pro hac vice*)
Matteo Godi (*pro hac vice*)
PAUL WEISS RIFKIND WHARTON &
GARRISON LLP
2001 K Street, NW
Washington, DC 20006-1047
Telephone: (202) 223-7300
Fax: (202) 223-7420
jphillips@paulweiss.com
kdunn@paulweiss.com
wisaacson@paulweiss.com
alawyer@paulweiss.com
apetty@paulweiss.com
gsanchez@paulweiss.com
mgodi@paulweiss.com

Alan Levine (*pro hac vice*)
Philip Bowman (*pro hac vice*)
COOLEY LLP
55 Hudson Yards
New York, NY 10001
Telephone: (212) 479-6260
Fax: (212) 479-6275
alevine@cooley.com
pbowman@cooley.com

Makiko Hiromi (*pro hac vice*)
Nicholas A. Butto (*pro hac vice*)
PAUL WEISS RIFKIND WHARTON &
GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Telephone: (212) 373-3000
Fax: (212) 757-3990
mhiromi@paulweiss.com
nbutto@paulweiss.com

Robert T. Cahill (VSB 38562)
COOLEY LLP
11951 Freedom Drive, 14th Floor
Reston, VA 20190-5656
Telephone: (703) 456-8000
Fax: (703) 456-8100
rcahil@cooley.com

J. Benjamin Rottenborn (VSB 84796)
WOODS ROGERS PLC
10 South Jefferson St., Suite 1400
Roanoke, VA 24011
Telephone: (540) 983-7600
Fax: (540) 983-7711
brottenborn@woodsrogers.com

David E. Mills (*pro hac vice*)
Joshua M. Siegel (VSB 73416)
Caitlin B. Munley (*pro hac vice*)
Samantha A Strauss (*pro hac vice*)
Alexandra Eber (*pro hac vice*)
Allegra K. Flamm (*pro hac vice*)
Gemma Seidita (*pro hac vice*)
Khary J. Anderson (*pro hac vice*)
COOLEY LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004
Telephone: (202) 842-7800
Fax: (202) 842-7899
dmills@cooley.com
jsiegel@cooley.com
cmunley@cooley.com
sastrauss@cooley.com
aeber@cooley.com
aflamm@cooley.com
gseidita@cooley.com
kanderson@cooley.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2021, I filed the foregoing with the Clerk of Court through the CM/ECF system, which will send a notice of electronic filing to:

Elmer Woodard
5661 US Hwy 29
Blairs, VA 24527
isuecrooks@comcast.net

James E. Kolenich
Kolenich Law Office
9435 Waterstone Blvd. #140
Cincinnati, OH 45249
jek318@gmail.com

*Counsel for Defendants Jason Kessler,
Nathan Damigo, and Identity Europa, Inc.
(Identity Europa)*

David L. Campbell
Justin Saunders Gravatt
Duane, Hauck, Davis & Gravatt, P.C.
100 West Franklin Street, Suite 100
Richmond, VA 23220
dcampbell@dhdglaw.com
jgravatt@dhdglaw.com

Counsel for Defendant James A. Fields, Jr

Bryan Jones
106 W. South St., Suite 211
Charlottesville, VA 22902
bryan@bjoneslegal.com

*Counsel for Defendants Michael Hill,
Michael Tubbs, and League of the South*

William Edward ReBrook, IV
The ReBrook Law Office
6013 Clerkenwell Court
Burke, VA 22015
edward@rebrooklaw.com

Counsel for Defendants Jeff Schoep, Matthew Heimbach, Matthew Parrott, Traditionalist Worker Party, National Socialist Movement, and Nationalist Front

Joshua Smith
Smith LLC
807 Crane Avenue
Pittsburgh, Pennsylvania 15216
joshsmith2020@gmail.com

Counsel for Defendants Matthew Parrott, Matthew Heimbach, and Traditionalist Worker Party

I hereby certify that on October 17, 2021, I also served the following non-ECF participants via mail or electronic mail:

Richard Spencer
richardbspencer@icloud.com
richardbspencer@gmail.com

Vanguard America
c/o Dillon Hopper
dillon_hopper@protonmail.com

Elliott Kline a/k/a Eli Mosley
eli.f.mosley@gmail.com
deplorabletruth@gmail.com
eli.r.kline@gmail.com

Christopher Cantwell
Christopher Cantwell 00991-509
USP Marion, 4500 Prison Rd.
P.O. Box 2000
Marion, IL 62959

and

Christopher Cantwell
Christopher Cantwell - Inmate: 00991-509
Grady County Law Enforcement Center
(Oklahoma)
215 N. 3rd Street
Chickasha, OK 73018

Robert "Azzmador" Ray
azzmador@gmail.com

Dated: October 17, 2021

/s/ Jessica Phillips

Jessica Phillips (*pro hac vice*)
PAUL WEISS RIFKIND WHARTON &
GARRISON LLP

Counsel for Plaintiffs